

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA 2001-10854; Notice 2]

Michelin North America, Inc., Grant of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., (Michelin) has determined that approximately 1,400 11R24.5 Michelin XDY-EX LRH tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Michelin has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety"—on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on October 29, 2001, in the **Federal Register** (FR66 54572). NHTSA received no comments.

FMVSS No. 199, S6.5, mandates that the tire identification and the DOT symbol labeling shall comply with 49 CFR part 574.

Michelin's noncompliance relates to the mislabeling of approximately 1,400 tires. The tires are 11R24.5 Michelin XDY-EX LRH truck tires. Michelin states that, "During the period of the 29th week of 2001 through the 36th week of 2001, the Spartanburg, South Carolina plant of Michelin North America produced a number of tires with a portion of the DOT tire identification number marking (as required on one side of the tire by 49 CFR 571.119 S6.5b) which did not meet the labeling specifications as described by 49 CFR 574.5."

Instead of a required marking that reads: "DOT B6 4F BVR X NN01", the tires were marked: "DOT B6 4F NN01 X BVR" where NN is the week of fabrication and 01 is the year. According to Michelin, all performance requirements of FMVSS No. 119 are met or exceeded. Up to 1,200 noncompliant tires have been delivered to end-users. The remaining noncompliant tires have been isolated in Michelin's warehouses and will be either brought into full compliance with the marking requirements of FMVSS No. 119 or scrapped.

Michelin supports its application for inconsequential noncompliance by stating that they do not believe the

marking error will impact motor vehicle safety because the tires meet all Federal motor vehicle safety performance standards and the non-compliance is one of labeling.

Michelin has reviewed and strengthened its procedures for detecting this type of error. Instead of checking the first piece of a particular production run at the press, future samples will be taken to a separate inspection station where exact labeling specifications are displayed for comparison. Based on this improvement, the likelihood of future errors of this type is reduced.

The agency believes that in the case of a tire labeling noncompliance, the measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's ability to identify them, should the tires be recalled for performance related noncompliance. In this case, the nature of the labeling error does not prevent the correct identification of the affected tires. 49 CFR 574.5 requires the date code portion of the tire identification number to be placed in the last or right-most position. Michelin's switching of the date code with the third position reserved for optional code information should not cause confusion since that optional information consists of letters, not numbers. Consequently, persons reading the tire identification label would easily be able to identify the four digit date code.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Michelin's application is hereby granted, and the application is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Dated: February 22, 2002.

Stephen R. Kratzke,

Associate Administrator, for Safety Performance Standards.

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DEPARTMENT OF TRANSPORTATION**Surface Transportation Board**

[STB Finance Docket No. 34168]

West Texas & Lubbock Railroad Company, Inc. and the Burlington and Northern and Santa Fe Railway Company—Joint Relocation Project Exemption—in Lubbock, TX

On February 20, 2002, West Texas & Lubbock Railroad Company, Inc. (WTLR) filed a notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint relocation project with The Burlington Northern and Santa Fe Railway Company (BNSF) in Lubbock, Lubbock County, TX.¹ The transaction was scheduled to be consummated after February 22, 2002. The earliest the transaction can be consummated is February 27, 2002, the effective date of the exemption (7 days after the verified notice of exemption was filed).

Under the joint relocation project, WTLR and BNSF propose the following transactions:

(1) WTLR will relocate to a new connecting track, which is to be built on behalf of WTLR by the City of Lubbock, located between WTLR milepost 7.2 and BNSF milepost 83.6, in Lubbock;

(2) BNSF will grant overhead trackage rights to WTLR over BNSF's line extending from BNSF milepost 83.6, at Broadview, TX, to BNSF milepost 88.6, at Canyon Jct., TX, a distance of approximately 5 miles;

(3) WTLR will abandon approximately 6.1 miles of its line between WTLR milepost 7.2 and WTLR milepost 1.1, in Lubbock.

WTLR states that the proposed joint relocation project will not disrupt service to shippers.² Additionally, WTLR states that the relocated line and trackage rights will not involve an expansion of service by WTLR into a new territory but will enable WTLR to preserve its current connection with BNSF in downtown Lubbock once WTLR abandons its line.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction

¹ The joint relocation project is part of a plan to accommodate the upgrade of U.S. Highway 82 in downtown Lubbock to a multilane, multilevel, controlled-access freeway. See *State of Texas (Acting by and Through the Texas Department of Transportation)—Acquisition Exemption—West Texas & Lubbock Railroad Company, Inc.*, STB Finance Docket No. 33889 (STB served July 5, 2000 and Mar. 6, 2001).

² There are no shippers located on the WTLR line being abandoned.